

[Second Reprint]

**SENATE, No. 1511**

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**STATE OF NEW JERSEY**  
**211th LEGISLATURE**

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INTRODUCED APRIL 29, 2004

**Sponsored by:**

**Senator FRED MADDEN**

**District 4 (Camden and Gloucester)**

**Senator JOSEPH F. VITALE**

**District 19 (Middlesex)**

**Assemblyman GORDON M. JOHNSON**

**District 37 (Bergen)**

**Assemblyman DAVID R. MAYER**

**District 4 (Camden and Gloucester)**

**Co-Sponsored by:**

**Assemblyman Wolfe**

**SYNOPSIS**

Reduces from 0.10% to 0.08% the blood alcohol content at which a person is considered guilty of operating a boat while under the influence.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Law and Public Safety Committee on May 27, 2004, with amendments.

**(Sponsorship Updated As Of: 6/11/2004)**

1 AN ACT concerning operating a vessel while under the influence <sup>1</sup>[of  
2 alcohol]<sup>1</sup> and amending P.L.1952, c.157 and P.L.1986, c.39.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6  
7 1. Section 3 of P.L.1952, c.157 (C:12:7-46) is amended to read as  
8 follows:

9 3. a. No person shall operate a vessel on the waters of this State  
10 while under the influence of intoxicating liquor, a narcotic,  
11 hallucinogenic, or habit-producing drug or with a blood alcohol  
12 concentration of [0.10%] 0.08% or more by weight of alcohol. No  
13 person shall permit another who is under the influence of intoxicating  
14 liquor, a narcotic, hallucinogenic or habit-producing drug, or who has  
15 a blood alcohol concentration of [0.10%] 0.08% by weight of alcohol,  
16 to operate any vessel owned by the person or in his custody or control.

17 As used in this section, "vessel" means a power vessel as defined by  
18 section 2 of P.L.1995, c.401 (C.12:7-71) or a vessel which is 12 feet  
19 or greater in length.

20 A person who violates this section shall be subject to the following:

21 (1) For a first offense:

22 (i) if the person's blood alcohol concentration is 0.08% or higher  
23 but less than 0.10%, or the person operates a vessel while under the  
24 influence of intoxicating liquor, or the person permits another person  
25 who is under the influence of intoxicating liquor to operate a vessel  
26 owned by him or in his custody or control or permits another person  
27 with a blood alcohol concentration of 0.08% or higher but less than  
28 0.10% to operate a vessel, to a fine of not less than \$250 nor more  
29 than \$400; and to the revocation of the privilege to operate a vessel on  
30 the waters of this State for a period of [12 months] one year from the  
31 date of conviction and to the forfeiting of the privilege to operate a  
32 motor vehicle over the highways of this State for a period of three  
33 months;

34 (ii) if the person's blood alcohol concentration is 0.10% or higher,  
35 or the person operates a vessel while under the influence of narcotic,  
36 hallucinogenic or habit-producing drug, or the person permits another  
37 person who is under the influence of narcotic, hallucinogenic or  
38 habit-producing drug to operate a vessel owned by him or in his  
39 custody or control, or permits another person with a blood alcohol  
40 concentration of 0.10% or more to operate a vessel, to a fine of not  
41 less than \$300 nor more than \$500; and to the revocation of the

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Senate SLP committee amendments adopted May 13, 2004.

<sup>2</sup> Assembly ALP committee amendments adopted May 27, 2004.

1 privilege to operate a vessel on the waters of this State for a period of  
2 one year from the date of conviction and to the forfeiting of the  
3 privilege to operate a motor vehicle over the highways of this State for  
4 a period of not less than seven months nor more than one year.

5 (2) For a second offense, to a fine of not less than \$500 nor more  
6 than \$1,000; to the performance of community service for a period of  
7 30 days, in the form and on the terms as the court deems appropriate  
8 under the circumstances; and to imprisonment for a term of not less  
9 than 48 hours nor more than 90 days, which shall not be suspended or  
10 served on probation; and to the revocation of the privilege to operate  
11 a vessel on the waters of this State for a period of two years after the  
12 date of conviction and to the forfeiting of the privilege to operate a  
13 motor vehicle over the highways of this State for a period of [six  
14 months] two years.

15 (3) For a third or subsequent offense, to a fine of \$1,000; to  
16 imprisonment for a term of not less than 180 days, except that the  
17 court may lower this term for each day not exceeding 90 days during  
18 which the person performs community service, in the form and on the  
19 terms as the court deems appropriate under the circumstances; and to  
20 the revocation of the privilege to operate a vessel on the waters of this  
21 State for a period of 10 years from the date of conviction and to the  
22 forfeiting of the privilege to operate a motor vehicle over the highways  
23 of this State for a period of [two] 10 years.

24 Upon conviction of a violation of this section, the court shall collect  
25 forthwith the New Jersey driver's license or licenses of the person so  
26 convicted and forward such license or licenses to the [Director of the  
27 Division of Motor Vehicles] Chief Administrator of the New Jersey  
28 Motor Vehicle Commission. In the event that a person convicted  
29 under this section is the holder of any out-of-State motor vehicle  
30 driver's or vessel operator's license, the court shall not collect the  
31 license but shall notify forthwith the [Director of the Division of  
32 Motor Vehicles] Chief Administrator of the New Jersey Motor  
33 Vehicle Commission, who shall, in turn, notify appropriate officials in  
34 the licensing jurisdiction. The court shall, however, revoke the  
35 nonresident's driving privilege to operate a motor vehicle and the  
36 nonresident's privilege to operate a vessel in this State.

37 b. A person who has been convicted of a previous violation of this  
38 section need not be charged as a second or subsequent offender in the  
39 complaint made against him in order to render him liable to the  
40 punishment imposed by this section against a second or subsequent  
41 offender. If a second offense occurs more than 10 years after the first  
42 offense, the court shall treat a second conviction as a first offense for  
43 sentencing purposes and, if a third offense occurs more than 10 years  
44 after the second offense, the court shall treat a third conviction as a  
45 second offense for sentencing purposes.

46 c. If a court imposes a term of imprisonment under this section, the

1 person may be sentenced to the county jail, to the workhouse of the  
2 county where the offense was committed, or to an inpatient  
3 rehabilitation program approved by the [Director of the Division of  
4 Motor Vehicles] Chief Administrator of the New Jersey Motor  
5 Vehicle Commission and the Director of the Division of Alcoholism  
6 and Drug Abuse in the Department of Health.

7 d. In the case of any person who at the time of the imposition of  
8 sentence is less than 17 years of age, the period of the suspension of  
9 driving privileges authorized herein, including a suspension of the  
10 privilege of operating a motorized bicycle, shall commence on the day  
11 the sentence is imposed and shall run for a period as fixed by the court  
12 of not less than three months after the day the person reaches the age  
13 of 17 years. If the driving or vessel operating privilege of any person  
14 is under revocation, suspension, or postponement for a violation of  
15 any provision of this title or Title 39 of the Revised Statutes at the  
16 time of any conviction of any offense defined in this section, the  
17 revocation, suspension, or postponement period imposed herein shall  
18 commence as of the date of termination of the existing revocation,  
19 suspension or postponement. A second offense shall result in the  
20 suspension or postponement of the person's privilege to operate a  
21 motor vehicle for six months. A third or subsequent offense shall  
22 result in the suspension or postponement of the person's privilege to  
23 operate a motor vehicle for two years. The court before whom any  
24 person is convicted of or adjudicated delinquent for a violation shall  
25 collect forthwith the New Jersey driver's license or licenses of the  
26 person and forward such license or licenses to the [Director of the  
27 Division of Motor Vehicles] Chief Administrator of the New Jersey  
28 Motor Vehicle Commission along with a report indicating the first and  
29 last day of the suspension or postponement period imposed by the  
30 court pursuant to this section. If the court is for any reason unable to  
31 collect the license or licenses of the person, the court shall cause a  
32 report of the conviction or adjudication of delinquency to be filed with  
33 the [director] chief administrator. That report shall include the  
34 complete name, address, date of birth, eye color, and sex of the person  
35 and shall indicate the first and last day of the suspension or  
36 postponement period imposed by the court pursuant to this section.  
37 The court shall inform the person orally and in writing that if the  
38 person is convicted of personally operating a motor vehicle or a vessel  
39 during the period of license suspension or postponement imposed  
40 pursuant to this section, the person shall, upon conviction, be subject  
41 to the penalties set forth in R.S.39:3-40 or section 14 of P.L.1995,  
42 c.401 (C.12:7-83), whichever is appropriate. A person shall be  
43 required to acknowledge receipt of the written notice in writing.  
44 Failure to receive a written notice or failure to acknowledge in writing  
45 the receipt of a written notice shall not be a defense to a subsequent  
46 charge of a violation of R.S.39:3-40 or section 14 of P.L.1995, c.401

1 (C.12:7-83). If the person is the holder of a driver's or vessel  
2 operator's license from another jurisdiction, the court shall not collect  
3 the license but shall notify forthwith the **[director]** chief administrator  
4 who shall notify the appropriate officials in the licensing jurisdiction.  
5 The court shall, however, in accordance with the provisions of this  
6 section, revoke the person's non-resident driving or vessel operating  
7 privilege, whichever is appropriate, in this State.

8 e. In addition to any other requirements provided by law, a person  
9 convicted under this section shall satisfy the screening, evaluation,  
10 referral program and fee requirements of the Division of Alcoholism's  
11 Intoxicated Driving Programs Unit. A fee of \$80 shall be payable to  
12 the Alcohol Education, Rehabilitation and Enforcement Fund  
13 established under section 3 of P.L.1983, c.531 (C.26:2B-32), by the  
14 convicted person in order to defray the costs of the screening,  
15 evaluation and referral by the Intoxicated Driving Programs Unit.  
16 Failure to satisfy this requirement shall result in the immediate  
17 forfeiture of the privilege to operate a vessel on the waters of this  
18 State or the continuation of revocation until the requirements are  
19 satisfied.

20 f. In addition to any other requirements provided by law, a person  
21 convicted under this section shall be required after conviction to  
22 complete a boat safety course from the list approved by the  
23 Superintendent of State Police pursuant to section 1 of P.L.1987,  
24 c.453 (C.12:7-60), which shall be completed prior to the restoration  
25 of the privilege to operate a vessel which may have been revoked or  
26 suspended for a violation of the provisions of this section. Failure to  
27 satisfy this requirement shall result in the immediate revocation of the  
28 privilege to operate a vessel on the waters of this State, or the  
29 continuation of revocation until the requirements of this subsection are  
30 satisfied.

31 (cf: P.L.1995, c.401, s.37)

32  
33 2. Section 7 of P.L.1986, c.39 (C.12:7-55) is amended to read as  
34 follows:

35 7. a. (1) A person who operates a power vessel or a vessel which  
36 is 12 feet or greater in length on the waters of this State shall be  
37 deemed to have given his consent to the taking of samples of his  
38 breath for the purpose of making chemical tests to determine the  
39 content of alcohol in his blood, except that the taking of samples shall  
40 be made in accordance with the provisions of P.L.1986, c.39 and at  
41 the request of **[the State Marine Police Force]** a member of the State  
42 Police or a law enforcement officer who has reasonable grounds to  
43 believe that the person has been operating a vessel in violation of the  
44 provisions of section 3 of P.L.1952, c.157 (C.12:7-46).

45 (2) Whenever an operator has been involved in an accident  
46 resulting in death, bodily injury or property damage, an officer shall

1 consider that fact along with all other facts and circumstances in  
2 determining under paragraph (1) of this subsection whether there are  
3 reasonable grounds to believe a person is operating a vessel in  
4 violation of the provisions of section 3 of P.L.1952, c.157  
5 (C.12:7-46).

6 b. A record of the taking of the sample, disclosing the date and  
7 time thereof, as well as the result of any chemical test, shall be made  
8 and a copy shall be furnished or made available to the person so tested,  
9 upon his request.

10 c. In addition to the samples taken and tests made at the direction  
11 of [the State Marine Police Force] a member of the State Police or a  
12 law enforcement officer, the person tested shall be permitted to have  
13 samples taken and chemical tests of his breath, urine or blood made by  
14 a person or physician of his own selection.

15 d. [The State Marine Police Force] A member of the State Police  
16 or a law enforcement officer shall inform the person tested of his rights  
17 under subsections b. and c. of this section.

18 e. No chemical test, as provided in this section, or specimen  
19 necessary for a test, may be made or taken forcibly and against  
20 physical resistance thereto by the defendant. [The State Marine Police  
21 Force] A member of the State Police or a law enforcement officer  
22 shall, however, inform the person arrested of the consequences of  
23 refusing to submit to the test, in accordance with section 9 of  
24 P.L.1986, c.39 (C.12:7-57). A standard statement, prepared by the  
25 [Director of the Division of Motor Vehicles in the Department of  
26 Transportation,] Chief Administrator of the New Jersey Motor  
27 Vehicle Commission shall be read by [the State Marine Police Force]  
28 a member of the State Police or a law enforcement officer to the  
29 person under arrest.

30 (cf: P.L.1995, c.401, s.41)

31  
32 3. Section 8 of P.L.1986, c.39 (C.12:7-56) is amended to read as  
33 follows:

34 8. Chemical analyses of the arrested person's breath, to be  
35 considered valid under the provisions of [this amendatory and  
36 supplementary act] section 7 of P.L.1986, c.39 (C.12:7-55) shall have  
37 been performed according to methods approved by the Attorney  
38 General and by a person certified for this purpose by the Attorney  
39 General. The Attorney General is authorized to approve satisfactory  
40 techniques or methods, to ascertain the qualifications and competence  
41 of individuals to conduct the analyses, and to make certifications of  
42 the individuals. Certifications shall be subject to termination or  
43 revocation at the discretion of the Attorney General. The Attorney  
44 General shall prescribe a form for reports of the chemical analysis of  
45 breath to be used by law enforcement officers and others acting in

1 accordance with the provisions of [this amendatory and supplementary  
2 act] section 7 of P.L.1986, c.39 (C.12:7-55). The forms shall be  
3 sequentially numbered. Each chief of police, in the case of forms  
4 distributed to law enforcement officers and others in his municipality,  
5 or the other officer, board, or official having charge or control of the  
6 law enforcement department, where there is no chief, and the  
7 [Director of the Division of Motor Vehicles] Chief Administrator of  
8 the New Jersey Motor Vehicle Commission and the Superintendent of  
9 State Police, in the case of forms distributed to law enforcement  
10 officers and other personnel in their divisions, shall be responsible for  
11 the furnishing and proper disposition of the forms. Each responsible  
12 party shall prepare or have prepared records and reports relating to the  
13 forms and their disposition, in the manner and at such times as the  
14 Attorney General shall prescribe.

15 (cf: P.L.1986, c.39, s.8)

16

17 4. Section 9 of P.L.1986, c.39 (C.12:7-57) is amended to read as  
18 follows:

19 9. a. A court shall revoke the privilege of a person to operate a  
20 power vessel or a vessel which is 12 feet or greater in length, if after  
21 being arrested for a violation of section 3 of P.L.1952, c.157  
22 (C.12:7-46), the person refuses to submit to the chemical test provided  
23 for in section 7 of P.L.1986, c.39 (C.12:7-55) when requested to do  
24 so. The revocation shall be for [six months] one year unless the  
25 refusal was in connection with a second offense under section 3 of  
26 P.L.1952, c.157 (C.12:7-46), in which case the revocation period shall  
27 be for two years. If the refusal was in connection with a third or  
28 subsequent offense under section 3 of P.L.1952, c.157 (C.12:7-46),  
29 the revocation shall be for 10 years. The court also shall revoke the  
30 privilege of a person to operate a motor vehicle over the highways of  
31 this State for a period of: not less than seven months or more than  
32 one year for a first offense; two years for a second offense; and 10  
33 years for a third or subsequent offense. The court shall also fine a  
34 person convicted under this section; not less than [ \$250,] \$300 nor  
35 more than \$500 for a first offense; not less than \$500 or more than  
36 \$1,000 for a second offense; and \$1,000 for a third or subsequent  
37 offense.

38 b. The court shall determine by a preponderance of the evidence  
39 whether the arresting officer had probable cause to believe that the  
40 person had been operating or was in actual physical control of the  
41 vessel while under the influence of intoxicating liquor, or a narcotic,  
42 hallucinogenic or habit-producing drug, whether the person was placed  
43 under arrest, and whether the person refused to submit to the test  
44 upon request of the officer. If these elements of the violation are not  
45 established, no conviction shall issue.

46 c. In addition to any other requirements provided by law, a person

1 whose privilege to operate a vessel is revoked for refusing to submit  
2 to a chemical test shall satisfy the screening, evaluation, referral and  
3 program requirements of the Bureau of Alcohol Countermeasures in  
4 the Division of Alcoholism in the Department of Health. A fee of \$40  
5 shall be payable to the Alcohol Education, Rehabilitation and  
6 Enforcement Fund established under section 3 of P.L.1983, c.531  
7 (C.26:2B-32), by the convicted person in order to defray the costs of  
8 the screening, evaluation and referral by the Bureau of Alcohol  
9 Countermeasures and the cost of an education or rehabilitation  
10 program. Failure to satisfy this requirement shall result in the  
11 immediate revocation of the privilege to operate a vessel on the waters  
12 of this State or the continuation of revocation until the requirements  
13 are satisfied. The revocation for a first offense <sup>2</sup>[shall] may <sup>2</sup>be  
14 <sup>2</sup>[independent of] concurrent with or consecutive to <sup>2</sup>a revocation  
15 imposed <sup>2</sup>[because of] for <sup>2</sup>a conviction under the provisions of  
16 section 3 of P.L.1952, c.157 (C.12:7-46) <sup>2</sup>arising out of the same  
17 incident <sup>2</sup>; the revocation for a second or subsequent offense shall be  
18 <sup>2</sup>[concurrent with] consecutive to <sup>2</sup>a revocation imposed <sup>2</sup>[because  
19 of] for <sup>2</sup>a conviction under the provisions of section 3 of P.L.1952,  
20 c.157 (C.12:7-46).

21 d. In addition to any other requirements provided by law, a person  
22 convicted under this section shall be required after conviction to  
23 complete a boat safety course from the list approved by the  
24 Superintendent of State Police pursuant to section 1 of P.L.1987,  
25 c.453 (C.12:7-60), which shall be completed prior to the restoration  
26 of the privilege to operate a vessel which may have been revoked or  
27 suspended for a violation of the provisions of this section. Failure to  
28 satisfy this requirement shall result in the immediate revocation of the  
29 privilege to operate a vessel on the waters of this State, or the  
30 continuation of revocation until the requirements of this subsection are  
31 satisfied.

32 (cf: P.L.1995, c.401, s.42)

33

34 5. This act shall take effect immediately.